

**MINUTES**  
**Montana Fish, Wildlife & Parks Commission Meeting**  
**1420 East 6<sup>th</sup> Avenue**  
**Helena, MT 59601**

**MARCH 20, 2006**

**Commission Members Present:** Steve Doherty, Chairman; Tim Mulligan, Vice-Chairman; John Brenden via teleconference; Shane Colton; Vic Workman.

**Fish, Wildlife & Parks Staff Present:** Larry Peterman, Chief of Field Operations, FWP Staff.

**Guests:** See March 20, 2006 Commission file folder.

**Topics of Discussion:**

- 1. Opening - Pledge of Allegiance**
- 2. Approval of February 21, 2006 Commission Minutes**
- 3. Approval of Commission Expenses through February 28, 2006**
- 4. Introduction of Joe Maurier, Parks Division Administrator**
- 5. Canyon Ferry Reservoir & Lake Helena Commercial Fishing Regulations – Final**
- 6. Snowden Bridge FAS Easement Acquisition and Improvements – Final**
- 7. Appeal of Makoshika State Park Final Management Plan**
- 8. Appeal of Lake Five Fishing Access Site**
- 9. Future Fisheries Projects – Final**
- 10. Public Opportunity to Address Issues Not Discussed at this Meeting**

**1. Opening - Pledge of Allegiance.** Chairman Doherty called the meeting to order at 10:15 a.m. with a quorum of three Commissioners (Doherty, Workman, Brenden) and led the Pledge of Allegiance.

**2. Approval of February 21, 2006 Commission Minutes.**

*Action: Brenden moved and Workman seconded the motion to approve the minutes of the February 21, 2006 Commission meeting. Motion carried.*

Commissioners Mulligan and Colton arrived. Mulligan stated he had some changes to the minutes, and he also wanted them to reflect the proposed regulation changes, rather than a statement to reference to the files.

*Action: Brenden moved and Workman seconded the motion to rescind the previously voted on motion of approval of the February minutes. Motion carried.*

*Action: Mulligan moved and Workman seconded the motion to defer action on the February 21, 2006 minutes until the April Commission meeting. Motion carried.*

**3. Approval of Commission Expenses through February 28, 2006.**

*Action: Mulligan moved and Colton seconded the motion to approve the Commission expenses as presented. Motion carried.*

**4. Introduction of Joe Maurier, Parks Division Administrator. Larry Peterman, FWP Chief of Field Operations,** introduced and welcomed Mr. Joe Maurier, who has only recently joined Fish, Wildlife & Parks as the new Parks Division Administrator. Maurier, with over twenty-seven years of service with Colorado State Parks, brings a great deal of experience and expertise to the Department. Doherty extended his congratulations to Maurier, and welcomed him to FWP.

**5. Canyon Ferry Reservoir & Lake Helena Commercial Fishing Regulations – Final. Chris Hunter, FWP Fisheries Division Administrator,** explained that Richard and Donna Greene had made application for the 2006 commercial fishing permit on Canyon Ferry and Lake Helena. Their application was approved as a tentative at the February Commission meeting, and since that time, the public comment period has generated no comments of opposition. The Greene's were approved last year, but did not have a buyer, so they did not fish. This year they do have a buyer, so they anticipate a summer of fishing.

Application for this Class B permit to seine carp imposes a \$200 fee, and requires a \$1,000 Surety Bond. A number of conditions are also written into the permit to protect anglers and recreationists.

*Action: Mulligan moved and Workman seconded the motion to approve the Greene's application and the regulations for commercial fishing on Canyon Ferry Reservoir and Lake Helena for 2006 as recommended by the Department. Motion carried.*

**6. Snowden Bridge FAS Easement Acquisition and Improvements – Final. Chris Hunter, FWP Fisheries Division Administrator,** said this 12-acre school trust land site is located on the Missouri River, approximately 2.5 miles upstream from the North Dakota border. The purchase price of this easement agreement with DNRC would cost \$8,000. The public presently uses this site, however there are no sanitary facilities, and there is only a makeshift launching ramp. Development of this fishing access site would include a designated parking area, an improved road, a vault latrine, and a gravel boat ramp. There are currently only three fishing access sites along the 185-mile stretch of the Missouri River. Three favorable public comments were received on this proposal.

*Action: Brenden moved and Colton seconded the motion to approve the acquisition of the 12.131-acre easement on the lower Missouri River from the Department of Natural Resources for the sole purpose of establishing and developing a fishing access site at Snowden Bridge. Motion carried.*

~~~~~

Brenden inquired what the possibility would be of changing the date of the May 11 Commission meeting in Miles City since the Rocky Mountain State Parks Executive Conference (RMSPEC) is holding their convention in Whitefish at the Grouse Mountain Lodge May 8 – 11. Since FWP is hosting the RMSPEC conference, he feels it important that some, if not all, of the Commissioners attend, but the distance between Miles City and Whitefish would make it difficult to attend both events. Several options for meeting dates were discussed, including the possibility of holding a late summer or early fall meeting in Miles City. It was decided the May meeting would be held in Whitefish, and the July meeting would still be held in Kalispell as previously scheduled.

*Action: Workman moved and Colton seconded the motion to hold the May 11 Commission meeting in Whitefish rather than Miles City, and to hold the July meeting in Region 1 as well. Motion carried.*

~~~~~

**7. Appeal of Makoshika State Park Final Management Plan.** Chairman Doherty outlined the process by which the hearing would be conducted. His opening statement was as follows:

*Now is the time set for the hearing of the oral arguments in the appeal of a portion of the Makoshika State Park Management Plan by Appellant Mr. Haas.*

*The Commission received the administrative record prior to this hearing including all of Appellants comments during the original comment period, the Department's responses, the Makoshika State Park Management Plan and various correspondence by Mr. Haas and the Department in relation to the Appeal before the Commission. The Appellant and the Department are limited to discussing issues raised during the original comment period and nothing further.*

*Becky Dockter is representing the Director. Tom Reilly of the Parks Division will give the oral presentation of the case on behalf of the Department. Mr. Haas is representing himself and will give his oral presentation on behalf of himself as the Appellant.*

*The Commission has set aside 1 hour at this time and place for the Appeal to be heard. The Appellant will begin first and is allotted 15 minutes to present oral arguments to the Commission. The Department will follow and is allotted 15 minutes to present such oral arguments to the Commission. The Secretary will keep track of the time.*

*At the conclusion of the oral arguments, the Commissioners may ask their questions. There will be no questions between the parties. Upon completion of the Commissioners' questions, the Commission will go into executive session at which time positions will be discussed and motions voted upon. The Commission may take the matter under advisement and make a final decision at a future date. Once the Commission renders its decision, it will be followed by a written decision. Jack Lynch is here to assist the Commission with drafting its decision and will provide guidance to the Commission on issues of procedure.*

John Haas, Glendive, presented his appeal of the portion of the Makoshika Management Plan that deals with the rifle range within the Park. He noted that he had appeared before the FWP Commission twenty years ago when the rifle range instituted the \$1 per day use fee. In the early 1970's, the house and shooting range north of Glendive owned by the Dawson County Rod & Gun Club burned down. The local sportsmen used the insurance money and approached the Commission and requested help in establishing a new rifle range at Makoshika Park. The present range, canopy, supports, and benches were built as a cooperative effort between FWP and the Lower Yellowstone Outdoor Association (LYOA). The LYOA leased the range from the Park and held competitions. The lease was not renewed by the LYOA, and that is when the \$1 per day fee was instituted.

Haas said that in 1995, FWP searched for an alternate range location without consulting the local people. A site was located, but the public did not support the location. A committee, comprised of local citizens, was developed to search for an alternate site. The committee met a number of times, and the rifle range was discussed, but no alternate locations were located. Then the draft management plan came out with the position of relocating the range, which caught folks by surprise. FWP again contacted local shooting groups and indicated those groups sympathized with moving the range. The Dawson County Hunter Education group and the Dawson County Rod & Gun Club favored leaving the range in the park. Others also indicated a desire to leave the range in the park. A public meeting in Glendive was held, and only one person spoke in favor of moving the range out of the park. When the draft management plan came out and the comments were made, ten or eleven were in favor of leaving the range in the park, and one supported removing it from the park. A petition with over 300 signatures preferred to leave the range in the park.

Haas said it is evident that the desires of the community are in favor of leaving the range in the park. He added there could be some things that would make FWP act in direct opposition to the desires of the people. Safety would be a concern, however the range report contained only minor suggestions to improve the safety of the range; it does not indicate the range is unsafe. There is a list of mileages from the range to various points within the park. The only thing present when the range was built was the residence for staff. When the visitor's center and the picnic shelter were built, and the campground was developed, distance didn't seem to be a problem. He said the park facilities are not visible from the firing range. On the other side of the visitor's center is another shooting range, but it is an indoor range. That is the one that should be moved. The law enforcement range is adjacent to the county fairgrounds, to softball fields, to a veteran's nursing home, and to the law enforcement facilities. There is a private range located next to a housing development and a golf course. Another private range is located next to the interstate. He said this Management Plan does not accurately address the rifle range. The portion of the Management Plan that deals with the rifle range needs to be re-written.

Tom Reilly, FWP Parks Assistant Administrator, clarified that management plans are intended to set a direction for a park – they are designed to provide a general direction from which decisions can be made. Any proposed improvements to a specific park must go through the full public MEPA process, the environmental assessment process, and the public notification process. The recent Makoshika Management Plan was started in 2003, and was concluded in mid-2005. The last management plan for Makoshika was written in 1984. A lot has changed since then. In 1993, the new visitor center was built at the park entrance, and five years ago the group use shelter was built, and over the years FWP has invested approximately \$700,000 in road improvements within the park. Last week FWP issued another contract for \$150,000 for road work within the park.

Reilly said is becoming a more and more popular park; over 54,000 people visited it last year. He said the Haas appeal is “that there will be no more development done in the park until the rifle range issue is resolved”. That's the basis of the appeal. FWP has committed to finding a new range, and working with the community to do that. This means even buying the range and getting it up and running until a local group takes it over. That is specified in the Management Plan. A search committee, of which Mr. Haas is a member, has been developed to search for a suitable alternative site. The group has met twice, and another meeting is scheduled for March 29<sup>th</sup> in Glendive. No timeline has been set for completion, but the search for an alternate location has begun. It is the desire of FWP to relocate the range outside of the park.

Reilly said some things Haas' appeal has requested not be done includes developing trails from Glendive or from Dawson Community College. Discussions have included the possibility of running a waterline from the visitors center to the camping area, and of developing additional trails along the roadway from the visitor's center farther into the park. FWP is also working with the City of Glendive to repave the main entrance into the park and to develop hiking and biking trails along their street. According to Mr. Haas' appeal, FWP would not be able to proceed with any of those improvements. He reiterated that each improvement must go through the full MEPA process, and be presented for public comment. Reilly asked the Commission to uphold the final Makoshika State Park Management Plan, and endorse the search for another range site. In the meantime this range will remain open, unless a tragic accident occurs.

Brenden questioned if there was a reason why no local government leaders from Glendive area had signed the petition to keep the rifle range in the park. Haas said he would guess the petition was handed out at a Dawson County Rod and Gun Club meeting or at the Guns and Things sporting goods store.

Colton asked Haas if his actual appeal is to cease developments in the park until the issue with range is resolved. Haas said his appeal is based on the management plan finding a suitable site. He said FWP does not take good care of the range that is there, and finding cooperative people will be difficult.

Colton verified with Reilly that the range would only be closed down if an accident occurred. Reilly stated that FWP would not propose a trail through the rifle range as a means to close the range. It will remain open until a new site is located.

Colton asked Haas if he would have a problem with moving the range if a good site is located. Haas said he wouldn't, but he feels that as long as someone is "shoving something down his throat, he should be able to pick it off the menu". Haas said nobody has spelled out what is wrong with where the range is – let it be the only state park with a rifle range located on it.

Mulligan asked what authority the Commission has to require Commission approval of any potential development or change in the park that would impact the use of the rifle range. Jack Lynch, FWP Legal Counsel, replied that the Commission can do what they choose to do, they can either accept or dismiss this appeal, or make alternative recommendations.

Mulligan asked Lynch if it would be more appropriate to dismiss the appeal and put stipulations on FWP, or to accept the appeal with stipulations on FWP. Lynch felt it would probably be a better choice to dismiss the appeal and put stipulations on FWP.

Colton said his understanding was that any further improvements would be required to go through the MEPA process, which eventually results in Commission approval in the end. Mulligan said that is not always true. Reilly said if an EA goes out and is not appealed, the Commission would not hear about it again.

Becky Dockter, FWP Legal Counsel, said an appeals procedure was built into the final Makoshika management plan whereas appeals of park development issues or fishing access sites must first be appealed through the regional supervisor, then the director, and finally the Commission. Ultimately, any improvement or development would have to be appealable to the Commission.

Doherty confirmed with Reilly that under the new Management Plan the current rifle range would not be shut down until and unless a new site is up and running. If FWP and Dawson County cannot come up with a suitable location for a new public range with public money, the existing range, under the current management plan, will remain in existence.

Brenden asked if it was a matter of FWP not wanting a shooting range in the park. Reilly explained that it is a matter of safety issues. The visitor's center, group use shelter, 22-unit campground and other attractions are at the park entrance near the range. There must be a more suitable location in the Glendive area than in the state park. The park attracts many visitors who utilize the hiking trails and campgrounds etc. Colton added there is logic in the Management Plan's proposal to relocate the range.

Mulligan asked if the Management Plan would preclude or be a barrier to the Department's interest in maintaining or improving the current range. Reilly said FWP did commit to some improvements. Haas interjected "and removing the canopy within one year". Reilly said the removal of the canopy is indeed in the Management Plan, but he does not have the background on why. In the Plan it says to remove the canopy over the benches when no longer structurally sound with the timeline for completion of one year.

*Action: Colton moved and Workman seconded the motion to dismiss the appeal and uphold the Director's decision. If the canopy is removed within one year, and if a new site is not found, then a new canopy must be installed, and the Department must not abandon the range in the interim while a search is on.*

*Brenden asked for restatement of the motion: Colton moved to dismiss Mr. Haas' appeal and uphold the Director's decision with qualifications that if the canopy is removed within the next year, and a new location is not found within a year following that, the canopy will be replaced and the Department will not abandon its obligations to maintain the range prior to finding a new locations. Colton also added the stipulation that the Department not close the range prior to finding a new site, unless there is an accident.*

Brenden stated that an alternate location must be suitable and accessible to the people in the area. Workman stressed that the line of communication with the Commissioners is open, and that appeals are not the only avenue to achieve results. Doherty reiterated that the range will remain up and viable until and unless there is a new range.

Mulligan asked for assurance that the motion is broader than the canopy, that the Department will maintain the entire facility. Doherty stated it was his understanding that the range will not fall into disrepair. Colton stated that Bryce Christensen, FWP Region 7 Supervisor, had assured him the range would be maintained.

Reilly reiterated that the Makoshika State Park Management Plan states that FWP must “continue operating and maintaining the existing range until a new range can be acquired and is operational. The existing range may be closed immediately if a shooting accident occurs. Timeline for completion is ongoing”.

*Action on Motion: Motion carried. Four in favor – one opposed (Brenden).*

Brenden said he is opposed because he “wants the Department to know that we have to go with a good plan to be sure they don’t lose their range in the Glendive area”.

**8. Appeal of Lake Five Fishing Access Site.** Chairman Doherty outlined the process by which the hearing would be conducted. His opening statement was as follows:

*Now is the time set for the hearing of the oral arguments in the appeal of the Lake Five home owners to the proposed Lake Five Fishing Access.*

*Appellants and the Department were given an opportunity to submit written statements in support of their respective positions. The written statements together with selected pages from the Administrative Record and the Director’s Decision have been provided to the Commissioners prior to this hearing.*

*Bob Lane is representing the Director. Jim Satterfield, Regional Supervisor of Region 1 will give the oral presentation on behalf of the Department. Mick Taleff and Jim Walsh are representing the Appellants.*

*The Commission has set aside 1-1/2 hours at this time and place for the Appeal to be heard. The Appellants will begin first and are given 40 minutes to allocate among themselves and the Department is given 20 minutes to present such oral arguments to the Commission as they deem appropriate. The Secretary will keep track of the time.*

*At the conclusion of the oral arguments, the Commissioners may ask their questions. There will be no questions between the parties. Upon completion of the Commissioners’ questions, the Commission will go into executive session at which time positions will be discussed and motions voted upon. The Commission may take the matter under advisement and make a final decision at a future date. Once the Commission renders its decision, it will be followed by a written decision. Jack Lynch is here to assist the Commission with drafting its decision and will provide guidance to the Commission on issues of procedure.*

James Walsh and Mick Taleff presented their appeal of Director Hagener’s decision regarding the development of a fishing access site at Lake Five.

Walsh stated there are fisherman on Lake Five at this very moment without permission. He said he doesn’t mind because it is a public lake, and he expects it to remain so. Walsh does not object to a fishing access site on Lake Five, but objects to how the decision was arrived at to select this site. His concerns included the fear of an influx of jet skis on the lake, and the possibility that powerboats would no longer be allowed on Lake Five for recreation. Director Hagener’s decision eliminated the 200-foot wakeless zone, and stipulated that no personal watercraft be allowed, thus alleviating those concerns. He asked that these two stipulations remain in place should the appeal be denied.

Walsh said in the course of preparation, he had made detailed requests for records, has confirmed them, and on multiple occasions had been promised them, then later discovered that the person in charge didn’t know he had sent a letter of request and had no idea of what he was looking for. He said he had discovered that this proposal was based on an assumption that it is proper to target Lake Five for public access, and there is no record of this targeting decision. He said he does not know who made it, when it was made, or even how it was made, but Lake Five was the target when Elizabeth Taylor came with money in hand – there is evidence she was steered toward this lake. Walsh said he did receive records that showed there were efforts on the part of FWP to not include the affected people,

but to actively hide these proceedings. This project was agreed upon, acquired, and contracted under a veil of secrecy. After he was made aware and had requested records, he discovered an e-mail from an FWP staff member to the FWP legal department asking if it would be possible to not provide Walsh with a copy of the agreement between the Foundation and Ms. Taylor. When he received the paperwork, he said he realized this decision had been made long before it was made public. The first notice for public comment was published in early 2005, but the property had already been bought, sold, and paid for in late 2004. Three options were available for the public to comment on. One option was to do nothing and give the money back. This option was deceptive, but was designed to make the public feel good about being able to comment. A second option included developing an access site at this particular site, allowing the public only decisions as to how many parking spaces and what kind of boats would be allowed as the Department's decision had already been done in secret.

The third option was a land swap offered by the Ridenour family who had discovered this plan was afoot. The swap would have satisfied a great many of Walsh's concerns. It would allow people to access the lake through the area next to the resort. It would save money, it would have a much lower effect on the environment, it would not create the parking problem, and the people at the site would be supervised by folks who would know how to do this, rather than by an unnamed and ever-changing band of volunteers. It is improper for this Department to take sides in a family feud, when what should be served is the public's right to know what is going on, and what is best for the public. Walsh said the good neighbor statute addresses minimal impact, and this proposal would have minimal impact if the land swap were adopted. The present proposal has maximum impact, particularly for him, as he is located close to this site.

He said the Department claims to prefer to handle these matters in break-out sessions, however there were no break-out sessions. Decisions were actively concealed from everyone, and the Department claims the original donors wanted to keep this a secret. It was the Edna Ridenauer family that wanted to keep it a secret. Edna was the seller – she got \$300,000 for the property, plus credit for another \$100,000, which would ostensibly be a donation.

Walsh said the bottom line is that there is an agreement signed by FWP and the Foundation, dated in September of 2004, obligating them to complete this project at the designated site by the end of July of 2006. That was done months before he found out about it. "They" argue that it can be given back to the Foundation to do what they want with it. "They" have guaranteed to complete it by 2006, while still keeping it secret. He said his personal preference is to send it back, do it right, let the public comment, stay out of the Ridenaur fight, and do what is right for the public after everyone gets a chance to express their thoughts. The resort site has the only nice, natural beach on Lake Five, which is an ideal place for the public to go. The proposed site does not have a natural beach. He is also concerned about a parking problem on the county road which would be alleviated through the swap.

Mick Taleff, Great Falls, said he owns land on Lake Five, and is before the Commission on behalf of himself and the Lake Five Homeowners' Association, approximately 50 people. He said it is odd that the Commission has a specific policy designated for appeals of fishing access sites, and he wondered why. He said it must be a problem the Commission deals with all of the time, or a specific policy would not have been necessary. Given this policy and the standards the Commission has adopted, it seems obvious that if any statute was violated in this proposal, the Commission would have to uphold the appeal. He said it seems clear to him that there has been a violation of several statutes, policies, rules and regulations.



Taleff fears that the Commission will look at this appeal as an attempt to ban public access to Lake Five. Public access has been provided through the resort, and when he has been approached for access permission, he has granted it. He has suggested ways to accomplish public access on Lake Five, and they want to accomplish it in a way that would be responsible to the landowners and to the stewardship of the lake. The objections they raise are based on deep concerns that there has been an attempt to subvert public participation in the process. He said he was shocked about the steps taken by FWP to undertake this process without allowing public participation. This goes back as early as January of 2003 when FWP made the decision that they would acquire property on Lake Five. FWP went forward to obtain zoning approval and plat approval, undertook studies, and actually purchased the property without giving the public notice that this was happening. He said Region 1 claimed no knowledge of the project, but they had to know because the records were replete with efforts to buy property on Lake Five. Essentially, it had been a "done deal".

Taleff said the public's right to know is sacred under the constitution, and it is the law. He said they were entitled to know about this proposal, and to provide input on decisions that were being made. Taleff said the Department targeted and steered Mrs. Taylor to this lake. It is clear that Mrs. Taylor simply called and said she would like to donate some money in the name of her son who was murdered, and when she told FWP how much money, Lake Five suddenly came onto the radar screen. Taleff said she simply wanted a handicapped canoe fishing access site on some other lake, and FWP personnel told her that those lakes were not available, but she should consider Lake Five. Mrs. Taylor was given a tour and a river raft ride pointing her to Lake Five. There is nothing in FWP's records to substantiate a claim that Mrs. Taylor wanted to keep this project secret; this was FWP's effort to keep this private.

Taleff said his first objection is that basically this acquisition was a done deal before the public was notified and allowed to participate. There was only one public meeting, and people were overwhelmingly opposed to going forward with this project. Petitions were circulated asking "do you favor access to Lake Five", and often included the additional question of "are you going to allow the rich folks on Lake Five to keep the public out". That is why people signed the petition.

Taleff also objected to the violation of specific laws, particularly the good neighbor policy. His interpretation of that policy is that you have to take care of what you presently have before you can start developing new properties, and that was not done in this case. There is no documentation in the records to substantiate that FWP has complied with the good neighbor policy.

Taleff said a third objection he has deals is whether the Director's decision is legitimate and valid. There is nothing to substantiate any analysis behind the decisions. There was never an analysis of whether the size differential of the lake from 235 acres to 151 acres should have affected the decision. He does not feel the Director gave the appeal issues adequate consideration.

Jim Satterfield, FWP Region 1 Supervisor, stated that Mrs. Taylor approached FWP in early 2003 in the interest of providing a memorial for one of her sons who was slain. Satterfield said FWP provided her with a list of potential opportunities for her consideration, and he takes exception to the accusation that she was steered only in one direction. The records include that list. As time went on, various sites were eliminated because they were sold or because they did not satisfy her criteria. Taylor then became interested in Lake Five.

Satterfield said FWP had been looking at enhancing access to Lake Five, and he agreed there is presently access to the lake, however it is limited. There is an 80-year history of fish stocking on Lake Five. He emphasized that in land transactions, there is a point in time when they become a project, as opposed to the research phase of a potential opportunity. When this land was purchased by the Foundation, FWP began the environmental assessment process. Before that process began, and the records show this, the Department appeared before the Commission in 2003 to get a "thumbs up endorsement". The Commission approved the proposal as a worthwhile project to pursue. The draft fishing access site environmental assessment was released in February of 2005.

Satterfield stated that it is his opinion that there has been an extraordinary amount of dialog and discussion, particularly with the Lake Five homeowners, regarding this issue. In 2005, Satterfield authored a memo detailing an on-site meeting held with several members of the Lake Five Homeowners Association to discuss what could be more amenable to them. This was the beginning of efforts to address the good neighbor act. The landowners wanted FWP to look into the alternate site, and they were desirous of regulations that would apply to the public, but not to them. With that input, FWP then released the final environmental assessment in May of 2005. That environmental assessment does address the issue they raised regarding the alternate site.

Satterfield stated that after the final environmental assessment was released, his decision was appealed to the FWP Director's Office. FWP met with the appellants to try to develop a win/win approach for development of a fishing access site on Lake Five. Satterfield had another conversation with Mr. Taleff before the Director's decision was made. They agreed on compromises of banning personal watercraft and modifying the wakeless area, applicable to everyone, including the landowners. These two modifications require action by the Commission and must be provided to the public for comment. The discrepancy in acreage between the 235 acres that was originally reported versus the 151 acres that was subsequently reported, was because originally the surface area included the lake plus it's associated wetlands, while the actual surface acre of just the water itself is 151 acres. From the standpoint of recreation management, FWP is looking at 151 acres.

Satterfield related that FWP made the commitment that if this fishing access site was approved, the wakeless area regulation would be reduced to provide for water skiing opportunities, the parking stalls would be reduced to 8, and there would only be 7 vehicle/trailer stalls. FWP would prohibit using a car parking stall to park vehicle/trailers, and would work with the county to avoid overflow allow the access road. FWP agreed to modify the hours of operation, and proposed that a caretaker live on the premises, on a seasonal basis, to manage the site. Satterfield said that FWP has made a number of attempts to comply with the good neighbor policy. FWP has followed MEPA regulations, has reached out to the landowners, and has tried to develop a win/win situation.

Satterfield stated that Region 1 examined the alternate site before the Director rendered his decision. The alternate site is only three acres while the present site is ten acres. The alternate site would require a subdivision variance because the subdivision requires at least ten-acre plots. The larger site would better accommodate site management and parking etc.

Taleff said he wants to work with the Department as much as possible, that there is a good relationship, but there are a number of differences of opinion. He said the list of sites that was provided to Mrs. Taylor included trails and other things, and by the time it came for Mrs. Taylor to make a decision, she was told there were only two possible sites – Ashley Lake and Lake Five. In actuality, the land at Ashley Lake had already been sold, so the sole option she had was Lake Five.

Taleff said he was puzzled at the statement regarding ‘when an interest becomes a project’. FWP is tying this project to when they actually acquired the land and made a decision to go forward with the assessment. He said he was not aware of a particular statute or rule that states when something becomes a project, but said it seems to him that when FWP applied for, and received, a final plat from Flathead County in October, 2003, and acquired a variance from the county, that if that isn’t a project, he doesn’t know what is. Taleff’s opinion is that a project is something that has a potential and is under consideration. It is clear that FWP was taking concrete, substantive steps to acquire the property and did acquire the property. His perception is that the Foundation may have been a vehicle for FWP to avoid the good neighbor policy by contending that the land was in the name of the Foundation.

Taleff said he appreciated the fact that the number of parking spaces was reduced, but that was the result of a negotiation. He said he does not know how the number of 8 spaces was determined any more than he knows how the number of 16 spaces was originally selected. There is no documentation as to how this was determined.

Taleff said this is the first time he has heard that Mr. Satterfield’s visit with them after the Record of Decision came out, was complying with the good neighbor statute. That statute says that it has a goal of no impact on adjoining landowners and public lands. In order to accomplish that goal, the legislature requires FWP to place maintenance of existing facilities as a priority over additional development. He does not understand how negotiating with them complies with the good neighbor policy.

Walsh said an essential part of the good neighbor statute is that projects will have minimal impact. That, related to the “secret” decision to not consider the land swap, is reason to reverse the decision. He said the Commission has the power to resolve this matter. He interprets the good neighbor statute as saying that the entire Department may not legally accept any new donations of property, or develop sites, until it has the ones it has in order. Walsh said there has to be a survey of existing sites, and a determination as to whether the Department is in compliance before they can accept new ones. The idea behind access is to do it right, and to let the public comment. Don’t do it in secret and get committed first. He was unaware of the initial “thumbs up”. This is a Department proposal, and it has a different set of considerations that apply than if it is a Foundation proposal. He agreed Satterfield did in fact spend a lot of time on this project, but the big decisions had already been made - in secret. He said that although FWP claims significant oral demands for fishing access, there is not one single written document in existence asking for access to Lake Five. Walsh said the implication was that there is substantial demand, but there isn’t, there wasn’t, and, in fact, it is not a good fishing lake.

Brenden questioned why the number of acres went from 250 acres to 150 acres, and how and why the Department continued to stock fish in the lake if there is no official public access. Satterfield replied that over the last 80 years limited fishing access had been gained by way of an old railroad right of way, and also through the resort. FWP has not stocked and managed the lake aggressively due to

limited access. The actual surface area of the lake is 150 acres, while the larger number reflected the lake and it's associated wetlands.

Brenden asked if the caretakers at Lake Five would be volunteers, to which Satterfield replied that they would be. FWP provides an on-site trailer, and requires an agreement between the caretakers and FWP. The gift agreement designates \$100,000 in the trust fund for maintenance of the site. Brenden added that he "doesn't have much faith in volunteers; you get what you pay for".

Workman asked if there is something in the agreement that prohibits FWP from trading or swapping this land. Satterfield said the gift agreement includes a minimal amount of shoreline feet, and there is a prescription for an amount of access for vehicles, for trailer access, and a monument in remembrance of Mrs. Taylor's slain son. He is not sure if the agreement strictly prohibits an exchange of that site for an equivalent site. The Foundation received title to the land in September of 2004, and still has it – FWP does not have the title.

Mulligan stated that access sites are frequently controversial, and that is why the policy was written regarding fishing access sites. He said he understands that proposed changes to bodies of waters can cause anxiety to those folks who come to think of them as their own, but the fact remains that the public owns the water. The Commission is charged with providing access to the public.

Mulligan said he struggles with the issues of when the project started, the work that was done before landowners were notified, and the "secret" issues. The proposal may have been kept secret due to the very nature of land negotiations, which is a common event. Mulligan said it is absolutely clear that regardless of what was agreed to by FWP or the Foundation, the Commission is not bound by any of those agreements. The comments by appellants that it was a "done deal" are totally off-track. The Commission makes the decisions on whether land purchases go forward.

Bob Lane, FWP Legal Counsel, said much of the initial process was typical in terms of providing public access to public waters. Part of the acquisition of public access is to identify those areas that FWP feels would benefit the public. Talking to landowners to see if they would sell their land for public use takes time. When the Department gets to the point that someone wants to deal, it becomes a project. Lane finds no problem with what was done, and has found no statutory requirements that compel FWP to have public involvement on those things that don't exist yet in terms of potential. They become a potential only when there is interest enough to deal. This is not a done deal. This appeal has provided an opportunity for those involved to voice their concerns.

Colton asked if the Commission did indeed give endorsement in 2003 for this project to go forward. Mulligan replied that it did. If the Commission votes against this proposal, the Foundation will have to decide what to do with the land. The Commission is not bound to approve the acquisition.

Brenden said he is against fee title and easements from time to time, but the records show that he has voted for some of them. He was there when the Commission gave the "thumbs up" to look into this proposal, and did not object to it, but he feels the matter could have been handled better.

Colton asked the appellants where they felt they were left out of the public process.

Taleff said they have the right to be a participant in the process and to be notified. Once a decision is made and steps are taken to pursue a project, then they should be included. The state policies on public participation provide that the public must be allowed to participate to the fullest extent practicable, and must get informational materials. Policy also says the Department shall provide and make accessible all available policy, program, and technical information to enable interested or affected parties to make informed and constructive contributions toward departmental decision making.

Colton said he was concerned about notification to the Lake Five landowners. Bob Lane emphasized that FWP has provided the public the information that needed to be provided. It is proper procedure to check out proposals and to determine if the proposal qualifies for a variance, etc., because if it does not qualify, there is no point in proceeding. FWP was at that point in this project.

Workman said that if every decision had to go before the public, it would be nearly impossible to get any work done. If there was no room for negotiations, there would be too many ways for individuals to stop the public from ever getting access. He doesn't buy the argument that the appellants weren't informed or required earlier notification.

Mulligan said land opportunities come up and must be dealt with by established deadlines. They come up when landowners come to FWP and say they want to sell *now*. It is not a matter of a prioritization process of letting the public process take place. He said he had the perception that one of the primary reasons the alternative was not pursued was because the landowners made it very clear that it would be a "cold day in a hot place" before they ever sold it.

Satterfield said when FWP and Mrs. Taylor began discussing the possibility of a memorial for her son, Bud Ridenour came to FWP with interest in selling. When that segment of the family found out that that property had been purchased by the Foundation, they were opposed to swapping the land because they said they dealt in good faith with the foundation, and identified this site for public access.

Mulligan asked the appellants why this site would have so much less impact than the one proposed by the Department.

Walsh said the proposed site is an undeveloped 10-acre parcel adjacent to other privately owned places. The swap would exchange the present site for a site right next to the Lake Five Resort where the land would not have to be dug up. It would save money in that much less access work that has to be done. We don't have to worry about people parking on the county road because there are parking spaces there. Walsh said unpaid volunteers who are getting free rent to supervise a site like this can not be relied upon. If the site swap was approved, site supervision would be done by professionals who do that kind of work.

Satterfield said one of the preliminary problems FWP had with the alternative site was the indications that there would be the expectation that there should be different rules that would apply to the public but not to the landowners. FWP feels the regulations should be the same to everyone. The management prescriptions that were discussed are the ban on personal watercraft will apply to everyone, as will the wakeless areas.

Doherty asked what Mrs. Taylor's intentions were, what she really wanted as a memorial for her dead son. Did she want recreational access site, did she want a small canoe access site, did she want a place for families to picnic and swim, did she want a place for speedboats? Taleff said her initial request was for a handicapped access canoe site, so families could picnic and could put in a canoe; she did not contemplate motorized watercraft or jet skis. Satterfield replied that in her preliminary discussions with Dan Vincent (previous Region 1 Supervisor), she indicated her late son was a fisherman, boater, and camper, and she was open-minded about her son's legacy. The gift agreement stipulated a memorial, a plaque, to honor the memory of her son. She donated a substantial amount of money to provide a fishing access site to memorialize her son and acknowledge his outdoor interests.

Satterfield said FWP will work with landowners and users to develop a management plan for the lake. Doherty asked how many boats are on the lake daily, and if the number of parking spaces are realistic. Walsh said they are not close to reality. On any given day, there are 7 or 8 boats pulling skiers. Most people understand the counterclockwise principal. Satterfield said the information he has received from the wardens is that there are about 6 or 7 boats.

Brenden asked if there are any terms in the gift agreement regarding trading the land for other property. Lane replied that the gift agreement does not restrict that alternative. Brenden said is in favor of public access on Lake Five, but he is curious why the appellants did not want to let jet skis on the lake. Walsh said the bottom line is that few people who own property on Lake Five have jet skis, and he was concerned that the public access would allow many of them to pour into the lake. Brenden expressed consternation about who decides who can have one type of recreation and others cannot. Brenden said due process has not been done. He would like to delay this and open it up so sides can get together, and conduct a walking tour to see the area. He feels another 30 or 60 days would alleviate a lot of problems.

Doherty asked if there were any time restrictions relative to this acquisition. Satterfield said there is a deadline spelled out in the gift agreement, item 9, page 2. The deadline is June 30, 2006. Workman said if there is any possibility of losing this access for the sportsmen of Montana, the Commission needs to go forward.

Bob Lane reiterated that there is indeed a deadline of June 30, 2006, and it is written in the gift agreement. If the Commission does not accept the proposal by the deadline, the Department is in jeopardy of losing this opportunity. FWP believes as long as substantial work has been done on this, it can be defended against a challenge. If this proposal is rejected by the Commission, the funds may go back to the Foundation who can complete the agreement and find someone else to manage this memorial fishing access site.

Taleff said 30-60 days will not give them anything, unless FWP agrees to go back and consider the swap as an option, and even so, that probably cannot be done in 30-60 days. In looking at the gift agreement, it says that by June 30 the *Foundation* agrees to place a commemorative stone at this access site. It does not say FWP has to do it, or it has to be completed as a site by that date.

Workman said all of the water in Montana is owned by the public, and they have the right to use that water. He has received many calls from constituents who hope the Commission approves the access. He has received no calls saying they don't want access. This is a super opportunity.

*Action: Workman moved and Mulligan seconded the motion that the Fish, Wildlife & Parks Commission uphold the Director's decision regarding Lake Five and that the Department accept donation of ten acres on Lake Five from the Fish, Wildlife & Parks Foundation as is contained in the Director's decision for the purpose of developing a fishing access site. In addition, I move that we accept the revenue from the trust fund set up through the Foundation for annual operating costs.*

Mulligan said he does not see the 3-acre piece as viable. It is small, and if parking is a problem on ten acres, it would be significantly worse on three. He said he does not see the issue as valid as far as ripping up the ground at the proposed site; that might happen with a personal residence as well. Those folks immediately adjacent to the proposed site may be happier to see it moved, but those folks in other areas would likely not be any happier to see an access site at an alternate site.

Colton said he never has voted against any public access before, and could not do that in good conscience. He said the lake is owned by everyone in Montana, and it is his obligation as a Commissioner to provide that.

Doherty expressed concern regarding some of the comments that were made in various e-mails - he said he is extremely bothered by them. Those comments are offensive, and he directed the Department not to conduct business like that again. Those comments border on illegality and they border on violating the spirit of the good neighbor policy. He thinks the Director has made good decisions toward minimizing the impact on the lake and on the existing homeowners on the lake.

*Action: Motion carried. Four in favor and one opposed (Brenden opposed).*

Mulligan said for the record, in case there is some concern in the future or an inference that the good neighbor policy was not considered by the Commission, he wants it noted that it was considered in his deliberations. The claims made by the appellants on the violation of that policy are not right. The Department does, on a regular basis, review the fishing access sites. If the Commission followed the appellants' logic on how the good neighbor policy would be implemented, there would never be another fishing access site in Montana.

Colton stated that the Commission wants to be good neighbors, and wants to maintain a positive relationship with those who reside on Lake Five.

**9. Future Fisheries Projects – Final.** Glenn Phillips, FWP Habitat Protection Bureau Chief, presented the future fisheries project proposals. The Future Fisheries Improvement Program provides funds for projects that restore fish habitats that benefit fish populations. Applications are reviewed twice a year by a 14-member citizen review panel, and those recommended for funding are forwarded to the Commission for approval. The applications include channel restoration, fencing, bank stabilization, replanting, fish screens, culvert replacement, and streamflow improvement projects. The next meeting of the advisory council is July 19, and the Commission is welcome to attend.

*Action: Colton moved and Workman seconded the motion to approve the future fishery review panel recommendations.*

Brenden said the Department needs to keep trying to develop projects in eastern Montana, and should work to get funding for Ft Peck.

*Action on motion: Four in favor – one opposed (Brenden).* Brenden noted he opposed the motion because of the Rock Creek proposal.

**10. Public Opportunity to Address Issues Not Discussed at this Meeting.** No comments.

*Action: Workman moved and Mulligan seconded the motion to adjourn. Motion carried.*

Meeting adjourned at 3:45 p.m.

---

**Steve Doherty, Chairman**

---

**M. Jeff Hagener, Director**